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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UNITED STATES OF CALIFORNIA,)	Case No.: CR-11-00658-LHK
)	
Plaintiff,)	MOTION OF JAMES McNAIR
)	THOMPSON TO WITHDRAW AS
vs.)	ATTORNEY OF RECORD FOR
)	DEFENDANT ADOLPHO CORNEJO
)	VASQUEZ
ADOLPHO CORNEJO VASQUEZ,)	
)	
Defendant.)	

DATE: January 25, 2012
TIME: 10:00 a.m.
DEPT: Courtroom 8,
Hon. Lucy H. Koh, presiding

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO THE
PARTIES TO THE ABOVE-CAPTIONED MATTER:**

PLEASE TAKE NOTICE that on Wednesday, January 25, 2012, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the above-entitled court, James McNair Thompson will move to withdraw as attorney of record for the defendant Adolpho Cornejo Vasquez.

1 The motion will be based on this notice, the attached Memorandum of Points
2 & Authorities, the attached Declaration of James McNair Thompson, and such
3 evidence and argument as may be adduced at the hearing.

4 Dated: January 22, 2012

5 Respectfully submitted,

6
7
8 James McNair Thompson

9 Attorney for defendant Adolpho Cornejo Vasquez

10 **POINTS & AUTHORITIES**

11 **I. INTRODUCTION**

12 James McNair Thompson, appointed pursuant to CJA, moves to withdraw on
13 the basis that the defendant, Adolpho Cornejo Vasquez, has become a fugitive, and
14 it is therefore impossible for James McNair Thompson to discharge his obligations
15 under the Sixth Amendment to the United States Constitution and the Rules of
16 Professional Conduct governing the practice of law in the State of California.

17 Should Mr. Cornejo Vasquez once again appear before this court, James
18 McNair Thompson would be more than willing to accept a reappointment to
19 represent him.

20 **II. FACTS**

21 On October 30, 2011, Magistrate Judge Grewal signed a CJA 20
22 (Appointment Of And Authority To Pay Court Appointed Counsel) reflecting the
23 appointment of James McNair Thompson to represent the defendant Adolpho
24 Cornejo Vasquez in the above-entitled case, with a *nun pro tunc* date of October 14,
25 2011.

1 On October 21, 2011, Magistrate Judge Grewal ordered defendant Cornejo
2 Vasquez released upon execution of a surety bond in the amount of \$75,000.00. (Doc
3 9)

4 Defendant's first appearance before the Hon. Lucy H. Koh was scheduled for
5 November 4, 2011. Defendant did not appear at on that date. (See Doc 12) James
6 McNair Thompson was unaware that defendant had run afoul of his conditions of
7 release for failing to appear at Pretrial Services, and the matter was continued to
8 December 7, 2011. Defendant Cornejo Vasquez failed to appear on that date as well,
9 but by that time the defendant was known to be a fugitive. (Doc 17: "Defendant
10 Vasquez is not present and is a fugitive.") The matter was continued to January 25,
11 2012. (See Doc 17: "The matter is continued to January 25, 2012 at 10:00 a.m. for
12 further status/trial setting hearing.")

13 **III. JAMES McNAIR THOMPSON CANNOT PROCEED AS DEFENDANT'S**
14 **COUNSEL**

15 The defendant being a fugitive, James McNair Thompson cannot continue to
16 represent him.

17 With respect to any proposed bail forfeiture hearing,¹ there is nothing that
18 James McNair Thompson can say or do to protect the rights of defendant Cornejo
19 Vasquez. While he may willfully have violated the conditions of his release, for
20 reasons known only to himself, he may possibly be an amnesiac, be an unidentified
21 coma patient, or, for all James McNair Thompson knows, have been abducted by the
22 United States Armed Forces under the recently enacted National Defense
23

24 ¹ See Doc 17: "The Government anticipates filing motion for forfeiture of Defendant Vasquez' bond."
25

1 Authorization Act. James McNair Thompson simply has no idea why the defendant
2 failed to appear at either the November 4, 2011 or December 7, 2011 hearings.

3 He is informed and believes that a warrant issued because the defendant
4 failed to appear at Pretrial Services as required by the conditions of release, but he
5 is likewise ignorant of any explanation for this failure, assuming that the
6 information is accurate.

7 Likewise, in the absence of any contact with Mr. Cornejo Vasquez, James
8 McNair Thompson cannot negotiate to see whether a disposition is possible, nor can
9 he prepare for trial. While he could continue to explore what further discovery
10 might be forthcoming, this would be an idle act, since he could neither deploy the
11 discovery to achieve a reasonable settlement, nor could he use the discovery to
12 prepare for trial.

13 In short, without a defendant, there is nothing a defendant's lawyer can do.

14 **IV. JAMES McNAIR THOMPSON IS OBLIGED TO WITHDRAW UNDER THE**
15 **RULES OF PROFESSIONAL CONDUCT GOVERNING THE PRACTICE OF LAW**
16 **IN THE STATE OF CALIFORNIA**

17 "In all criminal prosecutions, the accused shall enjoy the right to [...] have the Assistance of Counsel for his defence." (United States Constitution, Sixth
18 Amendment)

19 Obviously, counsel cannot assist a defendant who is absent, and with whom
20 the counsel cannot confer.

21 Defendant's counsel cannot prepare to meet his obligations at the pretrial
22 conference or the trial without the cooperation of and access to the defendant.

23 He cannot act competently on defendant's behalf, and cannot allow himself to
24 act as the not-competent place-keeper for an absentee defendant.

1 California Rules of Professional Conduct Rule 3-110(A) provides, “A member
2 shall not intentionally, or with reckless disregard, or repeatedly fail to perform legal
3 services competently.” Rule 3-500 provides, “A member shall keep a client
4 reasonably informed about significant developments relating to the employment or
5 representation, including promptly complying with reasonable requests for
6 information and copies of significant documents when necessary to keep the client
7 so informed.” Finally, Rule 3-700(B)(2) provides that an attorney licensed in the
8 State of California must withdraw when he “knows or should know that continued
9 employment will result in violation of these rules or of the State Bar Act ...”

10 Being required to act as an uninformed and unprepared placekeeper for an
11 absent defendant who cannot assist counsel and whom in turn counsel cannot assist
12 would violate all three of these rules of professional conduct.

13 Therefore, James McNair Thompson moves for leave to withdraw as attorney
14 of record.

15 **V. WITHDRAWAL REQUIRES A COURT ORDER**

16 An attorney who wishes to withdraw must file a motion to
17 withdraw, showing good cause for allowing the attorney to withdraw.
18 Failure of the defendant to pay agreed compensation may not
19 necessarily be deemed good cause. Notice of the motion shall be given
20 to the defendant and all parties to the case. The attorney continues to
21 represent the party until entry of a court order granting leave to
22 withdraw. (Crim. L.R. Rule 44 – 2(b))

23 Unless such leave is granted pursuant to Crim. L.R. 44-2(b), the
24 attorney shall continue to represent the defendant until the case is
25 dismissed, or the defendant is acquitted or, if convicted, until the
expiration of the time for making post-trial motions and for filing
notice and appeal pursuant to Fed. R. App. P. 4(b). (Crim. L.R. Rule
44—2(c)(1))

1 In other words, if this motion is denied, James McNair Thompson would be
2 required to try the case, and pursue the appeal, with access to the defendant. This
3 would be untenable.

4 **VI. CONCLUSION**

5 For the foregoing reasons, James McNair Thompson requests this court file
6 an order relieving him as attorney of record.

7 Dated: January 23, 2012

8 Respectfully submitted,

9
10
11 James McNair Thompson

12 **DECLARATION OF JAMES McNAIR THOMPSON IN SUPPORT OF MOTION TO**
13 **BE RELIEVED**

14 1. I was appointed pursuant to the CJA to represent the defendant herein,
15 Adolpho Cornejo Vasquez, *nunc pro tunc* to October 14, 2011.

16 2. Mr. Cornejo Vasquez failed to appear at a status conference on November
17 4, 2011. I have had no contact, directly or indirectly, with Mr. Cornejo Vasquez
18 since before that date, and I have received no information from him, directly or
19 indirectly, explaining his absence on that date, or explaining his absence on
20 December 7, 2011.

21 3. I am unable to reach Mr. Cornejo Vasquez by telephone; the number
22 which he gave me is disconnected.

23 4. I have placed a copy of this motion in the US Mail, first class postage
24 prepaid, addressed to Mr. Cornejo Vasquez at the address he gave me.

